

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

BRYCE FRANKLIN,

Petitioner,

v.

Civ. No. 22-427 MLG/GJF

ATTORNEY GENERAL FOR
THE STATE OF NEW MEXICO, *et al.*,

Respondents.

ORDER STRIKING REPLY

THIS MATTER is before the Court upon review of Respondents' Motion to Strike Petitioner's Reply ("Motion") [ECF 27]. Petitioner Bryce Franklin filed a Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 on June 6, 2022. ECF 1. This Court entered its Proposed Findings and Recommended Disposition ("PFRD") on May 14, 2024.¹ ECF 18. In its PFRD, the Court recommended that the presiding judge deny Franklin's petition. *Id.* The PFRD gave Franklin until May 31, 2024,² to file any objections. *Id.* Franklin filed objections to the PFRD on June 5, 2024. ECF 21. Respondents filed a response to Franklin's objections on June 19, 2024. ECF 24. Franklin filed a reply in support of his objections on July 18, 2024. ECF 25. In their Motion, Respondents request that the Court strike Franklin's reply. Franklin did not respond to the Motion and his time to do so lapsed more than two months ago. For the following reasons, this Court **GRANTS** Respondents' Motion and orders that Franklin's reply be **STRICKEN**.

¹ The initial PFRD was filed in error [ECF 17], and an amended PFRD, with the correct caption, was entered the same day [ECF 18].

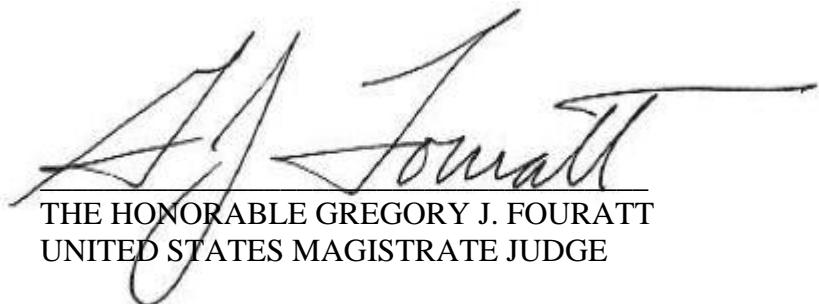
² The PFRD advised the parties that they could file objections within fourteen days, or by May 28, 2024. *See* ECF 18 at 10. Because Petitioner receives service by mail, however, his objections deadline was extended by three days, or until May 31, 2024. *See* Fed. R. Civ. P. 6(d).

As a procedural matter, the Court deems Franklin's failure to respond as his consent to granting the motion. *See* Local Rule 7.1(b) ("[t]he failure of a party to file and serve a response in opposition to a motion within the time prescribed for doing so constitutes consent to grant the motion").

As an alternative basis for granting the Motion, the Court turns to its merits. When a Magistrate Judge files a PFRD on a habeas petition, a party may file objections within fourteen days. Fed. R. Civ. P. 72(b)(2). After being served with the objections, the other party has fourteen days to respond to them. *Id.* But the initial objecting party is *not* permitted to then reply to the opposing party's response to the objections. *Chavez v. Horton*, 19-cv-1151 KWR/LF, 2023 WL 3455662, at *1 n.1 (D.N.M. May 15, 2023) ("Rule 72(b) does not contemplate reply briefs; the rule only allows responses to objections"). Because Franklin's reply was not authorized under Rule 72(b)(2), Respondent's Motion is well-taken.

IT IS THEREFORE ORDERED that Respondents' Motion to Strike [ECF 27] is **GRANTED** and Franklin's Reply [ECF 25] is **STRICKEN**.

SO ORDERED.



THE HONORABLE GREGORY J. FOURATT
UNITED STATES MAGISTRATE JUDGE